

RECEIVED & INSPECTED  
ORIGINAL  
AUG 17 2006  
FCC - MAILROOM

# PETITION FOR WAIVER

## INTRODUCTION AND DISCUSSION

No. of Carbon acid 074  
Mg. Acid 074

The Audit Report was provided to Vycera on January 23, 2006, and on January 31, 2006, USAC demanded that Vycera complete and submit revised 2003 and 2004 Form 499-A(s) to reflect the Audit Report conclusions.<sup>3</sup> In a letter dated March 2, 2006, USAC again demanded revised Form 499-A(s), and stated that failure to submit the revisions would result in USAC's completing such forms on Vycera's behalf and processing the forms for collection purposes.<sup>4</sup>

On March 22, 2006, Vycera appealed the Audit Report to USAC.<sup>5</sup> On or about April 7, 2006, after receiving Vycera's appeal but prior to issuing any decision, USAC informed Vycera that it had prepared and would be processing revised 2003 and 2004 Form 499-A(s) to reflect the revised revenue figures contained in the Audit Report findings.<sup>6</sup> In a letter dated May 4, 2006, Vycera explained to USAC that Vycera had appealed the Audit Report findings and thus objected to USAC's preparation and processing of revised Form 499-A(s) based on disputed findings.<sup>7</sup> Despite Vycera's appeal and May 4 letter, USAC submitted an invoice and statement of account to Vycera on or about May 22, 2006, seeking payments based on the revised 2003 and 2004 Form 499-A(s) prepared by USAC.<sup>8</sup>

On June 6, 2006, USAC responded to Vycera's March 22 appeal, stating that it could not consider the appeal on the basis that an Audit Report is a Board action to be appealed only to the

---

<sup>3</sup> A copy of the Audit Report is appended hereto at Attachment A, and a copy of the January 31, 2006 letter is appended hereto at Attachment B.

<sup>4</sup> A copy of the March 2, 2006 letter is appended hereto at Attachment C. The letter was postmarked March 8, 2006, and received by Vycera on March 13, 2006.

<sup>5</sup> A copy of Vycera's March 22 letter of appeal to USAC is appended hereto at Attachment D.

<sup>6</sup> A copy of the USAC letter dated April 7, 2006, is appended hereto at Attachment E.

<sup>7</sup> A copy of Vycera's May 4, 2006 letter is appended hereto at Attachment F.

<sup>8</sup> A copy of the invoice and statement of account dated May 22, 2006, is appended hereto at Attachment G.

Commission.<sup>9</sup> In that response, USAC acknowledged that Vycera would have sixty (60) days from June 6 to file with the Commission an appeal and request for review of the Audit Report and USAC's revision of the 2003 and 2004 Form 499-A(s) implementing the Audit Report.

Vycera submitted its Request for Review to the Office of the Secretary, the Wireline Competition Bureau ("WCB"), and USAC counsel on June 28, 2006 via FedEx overnight delivery, as indicated on the Certificate of Service appended to the original June 28 filing. Although each of the intended recipient offices signed for the FedEx on June 29, 2006, the filing was never posted to the Commission's Electronic Comment Filing System and a date-stamped copy was never returned to Vycera.<sup>10</sup> Vycera was informed on August 16, 2006, that none of the parties can locate the filing in their records.

While Vycera understands the Commission experiences delays in receiving mail due to heightened security measures, a six-week delay seems extraordinary, and Vycera believes it is best to resubmit its Request for Review. Vycera believes that the attached FedEx records satisfy the appeal deadline filing requirement set forth in Section 54.720(e) of the Rules;<sup>11</sup> however, in the event the Commission believes the FedEx records do not satisfy that requirement, in order to ensure that the applicable deadline has been met and to ensure that the resubmission of the Request for Review relates back to the original June 28 filing, Vycera requests that the Commission grant a waiver of the 60-day appeal deadline and consider the resubmitted Request for Review to be filed in a timely manner.

---

<sup>9</sup> A copy of the June 6 response from USAC is appended hereto at Attachment H.

<sup>10</sup> Copies of the FedEx bills and shipment tracking results, indicating that each recipient office signed for the FedEx delivery of the Request for Review on June 29, are appended hereto at Attachment I.

<sup>11</sup> 47 C.F.R. § 54.720(e) states in pertinent part that a "request for review shall be deemed filed on the postmark date."

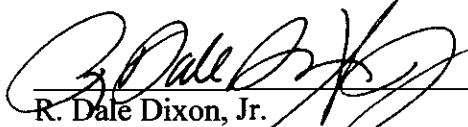
Section 1.3 of the Rules permits the Commission to grant waivers of the Rules “for good cause shown.”<sup>12</sup> In this instance, Vycera has shown that it attempted to file its Request for Review well in advance of the August 6, 2006 deadline. Indeed, FedEx invoice and tracking documents demonstrate that delivery of the Request for Review was completed on June 29, 2006. Furthermore, granting the request for waiver will not prejudice any party.

### **CONCLUSION**

Vycera respectfully requests that the Commission grant this request for waiver of the 60-day appeal deadline in Section 54.720 of its Rules and consider Vycera’s concurrent resubmission of its Request for Review as a timely appeal.

Respectfully submitted,

VYCERA COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "R. Dale Dixon, Jr.", is written over a horizontal line.

R. Dale Dixon, Jr.  
Vice President & General Counsel  
12750 High Bluff Drive, Suite 200  
San Diego, California 92130  
858.792.2400 (Tel)  
858.793.0141 (Fax)

August 16, 2006

---

<sup>12</sup> 47 C.F.R. § 1.3.

# ATTACHMENT A



Universal Service Administrative Company

---

**PRIVILEGED & CONFIDENTIAL**

**To:** Mr. WB Erwin, Vice President of Finance Division  
**From:** Wayne Scott, Vice President of Internal Audit Division  
**Date:** October 5, 2005  
**Re:** Independent Auditor's Report of Contributor Revenue Compliance on Vycera Communications, Inc. (USAC Audit No. CR2005CP004)

---

**Introduction**

The Internal Audit Division (IAD) of the Universal Service Administrative Company (USAC) has audited the compliance of the process by which Vycera Communications, Inc. (Vycera), Filer Identification Number 812626, completed its 2003 and 2004 Federal Communications Commission (FCC) Form 499-A with the regulations governing USF contributors set forth in 47 CFR Part 54 as well as FCC Form 499-A Instructions. Compliance with FCC Regulations and the Form 499-A Instructions is the responsibility of Vycera's management. IAD's responsibility is to express an opinion on Vycera's compliance with the Rules based on our audit.

**Purpose and Scope**

Elizabeth Chou, USAC Internal Auditor, conducted the audit in accordance with Government Auditing Standards issued by the Comptroller General of the United States (GAS, 2003). Our audit included examining, on a test basis, evidence supporting the data reported to USAC on FCC Form 499-A, as well as performing such other procedures as we considered necessary to form an opinion. We believe that our examination provides a reasonable basis for our opinion.

**Background Information**

Vycera Communications, Inc. is a regional telecommunications carrier operating in California. The company offers residential domestic and international long-distance services throughout the West Coast of the United States. For the filings years at issue, the carrier reported the following revenues which were part of the federal universal service fund (USF) contribution base:

<u>Contribution Base</u>	<u>2003</u>	<u>2004</u>
Interstate Revenue	260,301	494,134
International Revenue <sup>1</sup>	3,458,301	3,689,916
Total	\$3,718,602	\$4,184,050

### **Objective and Procedures**

The primary objective of our audit was to determine the accuracy and completeness of the revenues reported on the FCC Form 499-A and to identify any potential misstatements which may result in a change to the contribution liability amount. IAD performed an examination of the 2003 and 2004 FCC Form 499-A (covering the revenue period January 1, 2002 – December 31, 2003). IAD also performed procedures to ensure the carrier was compliant with FCC Form 499-A regulations concerning appropriate support and record retention. IAD sent a Form 499-A Questionnaire that was completed by the carrier. This questionnaire was used to gain a better understanding of the carrier's business and to identify any areas requiring additional attention.

IAD conducted audit procedures to ensure the carrier correctly reported "gross billed revenues"<sup>2</sup> from all sources on its Form 499-A by obtaining a reconciliation of the total revenues as reported on the Form 499-A to the carrier's financial statements. IAD also ensured the correct classification of the carrier's revenue accounts and appropriate placement on the different Form 499-A line items by reconciling the carrier's General Ledger (G/L) to the Form 499-A.

The FCC Form 499-A requires the carrier to classify revenues as either intrastate, interstate, and/or international revenues through the use of "good faith" estimates, safe harbor percentages, or actual revenue amounts. IAD obtained supporting documentation for the carrier's method and determination of these percentages or amounts to ensure it was compliant with the Form 499-A Instructions and FCC Regulations. To support "good faith" estimates, IAD requested documentation in the form of traffic studies or minutes of use reports.

Additionally, each filer that reports "Carrier's Carrier Revenue" in Block 3 of the Form 499-A, should have documented procedures to ensure that it reports in Block 3 only revenues from entities that reasonably would be expected to contribute to support universal service. IAD obtained a listing of all the carrier's resellers and ensured that proper documentation was adequately maintained. IAD also ensured that the carrier's resellers reported as revenue subject to USF the revenues the carrier reported as "Carrier's Carrier Revenue."

<sup>1</sup> This carrier qualified for the Limited International Revenue Exemption (LIRE) on the final processed 2003 and 2004 Form 499-A and did not contribute to the USF based on its international revenues.

<sup>2</sup> In a memo to the FCC dated November 4, 2005, USAC IAD requested the Commission's guidance on carriers who report revenues based on revenue recognition principles in accordance with GAAP as these revenues often differ from "gross billed revenues." Until this determination is made by the Commission, IAD will audit carriers' Form 499-A based on revenues reported in the carriers' general ledger and Financial Statements.

**Conclusion**

In our opinion, Vycera was not compliant with the FCC regulations for the periods reviewed and the carrier's revenues were not stated in accordance with the FCC Form 499-A Instructions in all material respects. The potential total monetary effect on the carrier's contribution base resulted in an increase on the 2003 Form 499-A of \$342,136 and an increase on the 2004 Form 499-A of \$50,608. The combined potential additional amount due to the Fund from the carrier for both years is \$29,173. A summary of IAD's findings and recommendations, the carrier's responses, IAD's response to the carrier's response, where applicable, and USAC Financial Operations Management responses are included below.

**Audit Procedures, Findings, Recommendations and Responses****1. USF Fees**

According to the Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, applicable to the audited years, "[a]ny charge that is identified on a bill as recovering contributions to universal service support mechanisms must be shown on Line 403 and should be identified as either interstate or international revenues."

IAD determined from Vycera's questionnaire that its customers were billed USF fees in revenue year 2002. However, there was no revenue amount reported on Line 403 of the 2003 Form 499-A. Per the carrier, the carrier's auditors did not allow the carrier to report this as revenue on its financials because it is pass-through revenue. Therefore, USF fees were reported in the carrier's financials as an offset to the amount paid to the USF. IAD noted that for the Form 499-A, however, this amount must be reported in Line 403. IAD obtained the carrier's 2002 G/L and determined that the amount that should have been reported on the 2003 Form 499-A was \$187,036. IAD also noted that since Vycera qualified for LIRE on the 2003 Form 499-A and the pass-through charges are assessed on customers as recovery for USF contributions, these revenues must be classified as interstate revenues.

**Recommendation**

USAC IAD recommends that Vycera re-file its 2003 Form 499-A to properly report revenues collected for USF on Line 403 of the Form 499-A.

**Carrier Response<sup>3</sup>****2003 Form 499-A, Line 403**

Concerning the unreported USF fees collected by Vycera in 2002, Vycera agrees with IAD's conclusion that the unreported USF fee amount of \$187,036 should be reported on Line 403 of a revised 2003 Form 499-A as interstate revenue. And Vycera agrees with IAD's conclusion that Vycera qualified for LIRE on the 2003 Form 499-A before and after the IAD audit report.

---

<sup>3</sup> The carrier's responses are indented to represent the exact response received from the carrier.



Accordingly, Vycera concurs with the portion of IAD's recommendation that Vycera re-file its 2003 Form 499-A to report \$187,036 collected for USF on Line 403. The revision results in an increase of on \$187,036 on Vycera's 2003 Form 499-A contribution base."

### **Financial Operations Management Response**

Financial Operations agrees with IAD's finding that the unreported USF fees should be reported on line 403 of the 2003 Form 499A.

Please note that the LIRE calculations will be conducted according to standard billing procedures based on official FCC regulations on the information provided in the new form. Financial Operations will not comment on any statement of LIRE for any filing until final billing processes have been completed.

### **2. Jurisdictional Allocation of Revenues**

According to the Instructions to the Form 499-A, "subscriber line charges levied under a tariff filed by the reporting entity or placed on customer bills as a pass-through of underlying carrier subscriber line charges" should be reported on Line 405 of the Form 499-A. It further instructs that federal subscriber line charges typically represent the interstate portion of fixed local exchange service. IAD noted that the FCC definition of a subscriber line charge includes, "FCC Charge for Network Access", "Federal Line Cost Charge", "Interstate Access Charge", "Federal Access Charge", or "Customer Line Charge." In addition, the Instructions to the Telecommunications Reporting Worksheet, Form 499-A states, "[i]f interstate and international revenues cannot be determined directly from corporate books of account or subsidiary records, filers may provide on the Worksheet good-faith estimates of these figures."

Per the carrier, all revenue from Vycera's local services are generated from the resale of Pacific Bell's (Pac Bell) lines and are classified as intrastate revenues on the Form 499-A. IAD obtained sample Pac Bell invoices from both revenue year 2002 and 2003 to ensure these revenues were accurately reported as intrastate revenues. IAD noted that on each sample invoice, Pac Bell billed Vycera FCC Imposed Interstate Access Fees that Vycera then billed the consumer. Per the carrier, these fees were not booked as revenue but netted against an expense account and therefore omitted from both the 2003 and 2004 Form 499-A. IAD noted that per the Instructions to the Form 499-A, these revenues collected by Vycera and remitted to Pac Bell should be reported on the Form 499-A as interstate revenues. IAD obtained invoice summaries and G/L account details and noted that \$106,670 and \$58,287 in 2003 and 2004 respectively, should have been reported in Line 405 as interstate revenues.

IAD also noted that the carrier stated it used traffic reports generated from the billing systems to estimate the applicable interstate and international percentages. IAD obtained the traffic reports generated monthly in 2002 and 2003 and recalculated the interstate and international percentages to ensure the amount reported on the Form 499-As were reasonable. IAD noted that for revenue years 2002, IAD calculated a percentage for international revenue of 57 percent; however, the amount reported on the 2003 Form 499-

A was 42 percent. The carrier should therefore have reported the 57 percent as its international percentage of its long distance revenues; however this has no monetary effect on the carrier's additional contribution because the carrier qualified for LIRE on the 2003 Form 499-A. In 2003, on the 2004 Form 499-A, the carrier provided adequate documentation to validate and support the percentage allocations reported on the Form 499-A. IAD did not note a finding in this year.

**Recommendation**

USAC IAD recommends that Vycera re-file its 2003 and 2004 Form 499-A to accurately report Interstate Access Fees as interstate revenue in Line 405. IAD also recommends that Vycera ensure all good faith estimates used in reporting intrastate, interstate and international allocations on the Form 499-A be adequately supported by its traffic studies or minutes of use reports.

**Carrier Response**2003 Form 499-A, Line 405 & 2004 Form 499-A, Line 405

As acknowledged by IAD, the Company passes through to its customers an "FCC Imposed Interstate Access Fee" (*i.e.*, subscriber line charge) that is assessed by its underlying provider, Pacific Bell, with no resale or other discount to Vycera. Importantly, Vycera merely passes through this fee to its customers; the Company does not mark-up this fee in any way, nor does the Company book the fee as revenue. Instead, this fee is netted against an expense account, similar to how the Company handles other types of government-mandated surcharges.

In its *First Universal Service Order*, the FCC specifically recognized that unlike a universal service fee, the subscriber line charge is a *government-mandated* end-user surcharge.<sup>4</sup> While Vycera acknowledges that the Form 499-A instructions indicate that subscriber line surcharges should be reported as universal service revenue, as a government-mandated surcharge, the subscriber line charge instead should be treated the same way that other government-mandated surcharges are treated – namely, the subscriber line charge, if not booked as revenue by the carrier, should be excluded from reported revenue. Vycera would agree that to the extent that a carrier is not merely passing through a subscriber line surcharge, but instead is recovering an amount in excess of the subscriber line surcharge, it should be required to report and pay USF on the excess amount as revenue. But carriers that are passing through a government mandated surcharge should not be required to pay USF on that surcharge – it is not revenue and should not be treated as such.

Nevertheless, to the extent that USF is assessed on subscriber line surcharges, at minimum, that revenue should not be allocated as entirely interstate as done by the IAD. The purpose of the subscriber line charge is for local exchange carriers to recover the costs associated with providing access to the long distance

---

<sup>4</sup> *Federal-State Board on Universal Service*, Report and Order, 12 FCC Red 8776, ¶855 (1997) ("*First Universal Service Order*").

network.<sup>5</sup> Access to the long distance network includes the ability to place both interstate *and international* calls. While the Instructions to the Form 499-A state that subscriber line charges are “typically” interstate,<sup>6</sup> there is no FCC requirement that all subscriber line charges be classified for universal services purposes as entirely interstate revenue. Indeed, IAD did not cite to any authority for the proposition that subscriber line charges must be classified as interstate. Thus, to the extent that USF is assessed on subscriber line charges, Vycera objects to the IAD allocation of all of those charges as interstate. Instead, those charges should be allocated according to the traffic reports that Vycera provided to IAD to estimate the applicable interstate and international percentages for its end user revenues. Vycera’s traffic reports show that assuming subscriber line charges represent 100% interstate usage of the long distance network is patently unreasonable. USAC, can, in accordance with FCC rules and its own internal guidelines, make estimates of a contributor’s revenue in certain instances, based on all relevant information it has available.<sup>7</sup> Although IAD has relevant information regarding Vycera’s traffic patterns, it has disregarded that information and decreed all subscriber line charges to be interstate. Instead, to the extent that USF is assessed on subscriber line charges, IAD should allocate Vycera’s subscriber line charges according to traffic reports provided to IAD. Such an allocation is consistent with the FCC rules and would more accurately reflect the jurisdiction of the costs associated with the long distance network used in the provision of services to Vycera’s customers.

Finally, Vycera objects to the recommendation that it be required to re-file its Form 499-As consistent with the recommendations in this Worksheet. Where Vycera disagrees with the findings and appeals those findings, the Company reserves its right not to file a Form 499-A that contains inaccurate revenue information based on a finding that is subject to an appeal.”

#### **IAD Response to the Carrier’s Response**

IAD reiterates that the Instructions to the Form 499-A explicitly state that subscriber line charges are to be included as interstate revenues on the Form 499-A. The carrier’s arguments directly contradict these Instructions.

#### **Financial Operations Management Response**

499 Instructions

III. Specific Instructions

C. Block 3, Block 4-A and Block 4: Filer Revenue Information

2. Column (a) – total revenues

“Gross revenues also should include any surcharges on telecommunications services that are billed to the customer and either retained by the filer or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that

---

<sup>5</sup> *MTS and WATS Market Structure*, Third Report and Order, 93 FCC 2d 241, *modified on recon.*, Memorandum Opinion and Order, 97 FCC 2d 682 (1983).

<sup>6</sup> Form 499-A, Instructions, at 22.

<sup>7</sup> *See, e.g.*, 47 C.F.R. § 54.709(d).

are not recorded on the company books as revenues but which are instead are remitted to government bodies.”

The 499 instructions provide that all surcharges on telecommunications services billed to customers remitted to a non-government third party are considered gross revenues as it pertains to the 499 filings. As stated in Vycera’s response, the “FCC Imposed Interstate Access Fee” (*i.e.*, subscriber line charge) is a pass-through fee to its customers that is remitted to Pac Bell. Pac Bell is not a government body. Accordingly, the 499 instructions require the subscriber line charge billed to Vycera’s customers be reported as gross billed revenue on line 405 of the 499A form.

Vycera contends:

“The purpose of the subscriber line charge is for local exchange carriers to recover the costs associated with providing access to the long distance network.<sup>8</sup> Access to the long distance network includes the ability to place both interstate *and international* calls..... those charges should be allocated according to the traffic reports that Vycera provided to IAD to estimate the applicable interstate and international percentages for its end user revenues.”

499 Instructions

III. Specific Instructions

C. Block 3, Block 4-A and Block 4: Filer Revenue Information

2. Column (a) – total revenues

“Circuits within the United States that connect a customer to an international circuit should be reported as interstate.”

The FCC 499 instructions reflect the fact that federal subscriber line charges typically represent the interstate portion of fixed local exchange. USAC also holds that the (as demonstrated in the instructions above) revenue from access to international circuits must be reported as interstate.

### **3. Bad Debt Expense**

According to the Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, dated April 2004, the amount reported as bad debt expense on Line 421 should be the amount reported as bad debt expense in the filer’s income statement for the year and the contributor’s uncollectible revenues/ bad debt expense should be calculated in accordance with Generally Accepted Accounting Principles. In addition, the Instructions state, “[f]ilers that maintain separate detail of uncollectibles by type of business should rely on those records in determining the portion of gross uncollectibles reported on Line 421 that should be reported on Line 422. Filers that do not have such detail should make such assignments in proportion to the reported gross revenues.” The Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, dated

---

<sup>8</sup> *MTS and WATS Market Structure*, Third Report and Order, 93 FCC 2d 241, *modified on recon.*, Memorandum Opinion and Order, 97 FCC 2d 682 (1983).

April 2003, and the 2003 FCC Form 499-A do not allow a deduction for bad debt expense.

USAC IAD noted that on the 2003 Form 499-A, the carrier deducted \$15,756 from Line 404 and \$1,465,113 from Line 414 as bad debt. IAD noted, however, that this was not an allowable deduction until the 2004 Form 499-A and must be added back to the carrier's contribution base revenues for the 2003 Form 499-A. IAD also noted that this finding resulted in an increase in the carrier's total revenues for Line 404 from \$5,267,044 to \$5,282,800; however, these revenues are all classified as intrastate revenues and therefore do not have a potential effect on the carrier's contribution base.

The remaining potential effect of this finding for Line 414 on the carrier's contribution base is detailed below.

<b>2003 Form 499-A</b>							
<b>Form 499-A Line</b>	<b>Revenue Amount Reported</b>	<b>Interstate Amount Reported</b>	<b>International Amount Reported</b>	<b>Revenue Amount Audited</b>	<b>Interstate Amount Audited</b>	<b>International Amount Audited</b>	<b>Potential Effect on Contribution Base</b>
414	\$ 8,271,309	\$ 260,301	\$ 3,458,301	\$ 9,736,422	\$ 306,697	\$ 5,549,761	\$ 46,396
<b>Total Estimated Effect on Contribution Base</b>							<b>\$ 46,396</b>

**NOTE:** IAD noted that the carrier appears to qualify for LIRE on the 2003 Form 499-A, therefore the potential effect on the carrier's contribution base is only assessed on interstate revenues.

USAC IAD also noted that in 2003 the carrier deducted \$19,530 as bad debt from the revenue amount reported in Line 404 (b) on the 2004 Form 499-A and inadvertently deducted this same amount again in Line 421. IAD noted that the deduction should be removed from Line 404 (b) so as to not double count the bad debt deduction. IAD noted that this finding resulted in a \$19,530 increase in the carrier's total revenues but has no monetary effect on the carrier's contribution because the revenues reported in Line 404 (b) were all local revenues. In addition, IAD noted that the carrier does not track bad debt expense by jurisdiction and therefore must allocate revenues in accordance with the interstate and international revenue percentages reported on the Form 499-A. On the 2004 Form 499-A, IAD noted that the carrier correctly allocated its bad debt expense attributable to interstate revenues as 4.3 percent; however, due to the audit findings, this percentage is no longer reflective of the carrier's total interstate revenues and should be changed to 5 percent. (IAD noted the audit results had no effect on the international percentage of bad debt and therefore did not affect the carrier's international contribution base revenues.) The monetary effects of this change results in a decrease in the carrier's potential additional contribution base detailed in the following.

<b>2004 Form 499-A</b>							
<b>Form 499-A Line</b>	<b>Revenue Amount Reported</b>	<b>Interstate Amount Reported</b>	<b>International Amount Reported</b>	<b>Revenue Amount Audited</b>	<b>Interstate Amount Audited</b>	<b>International Amount Audited</b>	<b>Potential Effect on Contribution Base</b>
422	\$ (1,088,374)	\$ (46,739)	\$ (349,018)	\$ (1,088,374)	\$ (54,419)	\$ (349,018)	\$ (7,680)
<b>Total Estimated Effect on Contribution Base</b>							<b>\$ (7,680)</b>

### Recommendation

USAC IAD recommends that Vycera re-file its 2003 Form 499-A to properly report gross billed revenues without a deduction for bad debt expense. IAD also recommends that Vycera re-file its 2004 Form 499-A to properly allocate bad debt expense in proportion to gross revenues reported on the Form.

**Carrier Response**2003 Form 499-A, Line 404

Regarding IAD's findings with respect to Vycera's 2003 Form 499-A, Line 404, Vycera agrees with IAD's conclusion that the \$15,756 of bad debt deducted by Vycera should be added back to its total revenue and that the bad debt amount is properly classified as intrastate revenue and has no effect on Vycera's contribution base. Accordingly, Vycera concurs with the portion of IAD's recommendation that Vycera re-file its 2003 Form 499-A to include in the total revenue amount reported at Line 404 the previously deducted bad debt amount of \$15,756, increasing the revenue amount in 2003 Form 499-A, Line 404 from \$5,267,004 to \$5,282,800. The revision would not result in any change on Vycera's 2003 Form 499-A contribution base.

2004 Form 499-A, Line 404(b)

In addition, Vycera agrees with IAD's conclusion regarding Vycera's inadvertent duplication of the \$19,530 bad debt deduction on its 2004 Form 499-A, Line 404(b), and the conclusion that the IAD finding increases Vycera's total revenue by \$19,530 but has no effect on Vycera's contribution base because the revenues reported at Line 404(b) are properly classified as intrastate revenues. Thus, Vycera concurs with the portion of IAD's recommendation that Vycera re-file its 2004 Form 499-A to remove the \$19,530 bad debt reduction from Line 404(b), thus increasing Vycera's total revenue amount reported at Line 404(b) from \$6,686,249 to \$6,705,779. The revision would not result in any change on Vycera's 2004 Form 499-A contribution base.

2004 Form 499-A, Line 422

Regarding IAD's findings with respect to Vycera's 2004 Form 499-A, Line 422, Vycera disagrees with IAD's audit findings and conclusions concerning Vycera's total 2004 interstate revenue amounts and related percentages between interstate and international revenue. For a more detailed dispute of the specific 2004 revenue findings and allocations, please see Vycera's responses below to Worksheet Nos. 4 and 6 (*IAD comment: reference to audit finding #2*). Accordingly, Vycera does not concur with IAD's recommendation that Vycera should allocate its bad debt expense attributable to interstate revenues as 5 percent versus the previously-filed 4.3 percent.

Vycera objects to the recommendation that it be required to re-file its 2004 Form 499-A consistent with this portion of the recommendations in this Worksheet. Where Vycera disagrees with the findings and appeals those findings, Vycera reserves its right not to file a Form 499-A that contains inaccurate revenue information based on a finding that is subject to an appeal.

2003 Form 499-A, Line 414

Concerning IAD's findings with regard to Vycera's 2003 Form 499-A, Line 414, Vycera concurs with IAD's conclusion that Vycera qualified for LIRE both before and after the IAD audit report and IAD's conclusion that the previously-deducted \$1,465,113 of bad debt should be added back to Vycera's total revenue amount, resulting in an increase in total revenue reported on the 2003 Form 499-A, Line 414 from \$8,271,309 to \$9,736,422. In addition, Vycera concurs with IAD's determination that Vycera's revenue year 2002 should have resulted in Vycera's having an international percentage of total revenue equal to 57 percent rather than the 42 percent previously reported by Vycera.

Accordingly, Vycera agrees with IAD's recommendation that Vycera re-file its 2003 Form 499-A, Line 414 to reflect (including the IAD findings and conclusions in Worksheet No. 3 (*IAD comment: reference to audit finding #4*)) total revenue of \$9,838,111, interstate revenue of \$308,731, and international revenue of \$5,649,417. The revisions at Line 414 – based on the relevant conclusions from Worksheet Nos. 2 and 3 (*IAD comment: reference to audit findings #3 and #4*)– would result in a total increase of \$48,430 on Vycera's 2003 Form 499-A contribution base."

**Financial Operations Management Response**

USAC Financial Operations Management has reviewed this IAD finding and has no additional comments.

**4. Reseller Revenues**

Per the Instructions to the Telecommunications Reporting Worksheet, Form 499-A, April 2004: Each filer should have documented procedures to ensure that it reports as "revenue from resellers" only revenues from entities that reasonably would be expected to contribute to support universal service. The procedures should include, but not be limited to maintaining the following information on resellers: Filer 499 ID; legal name; address; name of a contact person; and phone number of the contact person. Filers should provide this information to the Commission or the Administrator upon request. The filers should verify that each reseller will: 1) resell the filer's services in the form of telecommunications; and 2) contribute directly to the federal universal service support mechanisms."

IAD noted that the carrier did not maintain adequate information on its resellers in 2002 (the carrier exited the wholesale business in 2003) and did not have documented procedures to ensure that its resellers were contributing to the Fund. The carrier stated that it obtained tax exemption certificates for its resellers. However, IAD noted that this does not meet the requirements stated in the FCC Form Instructions to ensure each reseller contributes to the USF. IAD individually tested all of Vycera's ten resellers on the 2003 Form 499-A and determined whether each carrier contributed to the Fund using the FCC website and the USAC Form 499-A database. IAD noted that four out of the ten listed resellers did not contribute to the USF in 2002. In addition, IAD obtained a listing of revenue amounts associated with each carrier and noted that the revenue related to the resellers that did not contribute to the USF totaled \$101,689.

The potential effect of this finding on the carrier's contribution base is detailed below.

2003 Form 499-A							
Form 499-A Line	Revenue Amount Reported	Interstate Amount Reported	International Amount Reported	Revenue Amount Audited	Interstate Amount Audited	International Amount Audited	Potential Effect on Contribution Base
414	\$ -	\$ -	\$ -	\$ 101,689	\$ 2,034	\$ 99,655	\$ 2,034
Total Estimated Effect on Contribution Base							\$ 2,034

**NOTE 1:** The "Revenue Amount Reported and Audited" noted above for Line 414 indicates only the reported and audited amount of "Reseller Revenue" that should be reported in this line. It does not include Vycera's long distance revenues also reported in this line and noted in audit finding # 3.

**NOTE 2:** IAD noted that the carrier appears to qualify for LIRE in 2003 and therefore the potential effect on the carrier's contribution base is only assessed on interstate revenues.

### Recommendation

USAC IAD recommends that Vycera re-file its 2003 Form 499-A to properly report carrier's carrier revenues in Block 3 of the Form 499-A. IAD also recommends that if Vycera re-enters the wholesale business, it have documented procedures to ensure that each reseller will file a FCC Form 499-A and contribute directly to the universal service fund. Vycera should maintain filer ID numbers for all resale carriers and verify that these resellers are contributing to the universal service fund by using the FCC website: <http://gulfoss2.fcc.gov/cib/form499/499a.cfm>.

### Carrier Response

#### 2003 Form 499-A, Line 414

Vycera agrees with IAD's recommendation concerning revenue from resellers to the extent that Vycera did not maintain Filer 499 IDs, or obtain written certification of contributor status from entities the revenue from whom Vycera reported as reseller revenue in 2002. Vycera, however, objects to IAD's recommendation to the extent that it implies the Company was required to review the FCC on-line Form 499-A database to verify the contributor status of its reseller customers. There is no FCC rule requiring such action, nor does the Form 499-A instructions suggest such an action. Indeed, it is well known that the on-line Form 499-A database is notoriously unreliable, such that wholesalers cannot depend on it to confirm USF contribution status. Moreover, Vycera agrees that it should re-file its 2003 Form 499-A to properly report revenue related to the resellers that did not contribute to USF by reporting and allocating the \$101,689 in the following manner at Line 414: \$2,034 as interstate revenue and \$99,655 as international revenue. As noted above in response to Worksheet No. 2 (*IAD comment: reference to audit finding #3*), the revisions at Line 414 – based on the relevant conclusions from Worksheet Nos. 2 and 3 (*IAD comment: reference to audit findings #3 and #4*) – would result in a total increase of \$48,430 on Vycera's 2003 Form 499-A contribution base.

Vycera also agrees with IAD acknowledgement that Vycera qualified for LIRE on the 2003 Form 499-A.



#### Future Wholesale Operations

In addition, Vycera agrees that if it re-enters the wholesale business, it will maintain documented procedures to ensure that it reports as “revenue from resellers” only revenue from entities that reasonably would be expected to contribute to universal service.<sup>9</sup> Following the Form 499-A Instructions, these procedures will include, at minimum, maintaining the following information on each reseller: Filer 499 ID, legal name, address, name, and telephone number of a contact person.<sup>10</sup> Furthermore, again following the Form 499-A Instructions, to the extent that Vycera does not have independent reason to know that the reseller resells Vycera’s services in the form of telecommunications and contributes directly to USF, Vycera will obtain a signed statement from the resellers certifying that these criteria are met.<sup>11</sup> For the reasons cited above, Vycera, however, objects to IAD’s recommendation to the extent that it IAD implies that, in addition to the procedures described in the Form 499-A Instructions, there may be any requirement for a filer to verify that the resellers are contributing to the Universal Service Fund by using the FCC on-line Form 499-A database.”

#### **IAD Response to the Carrier’s Response**

IAD did not imply that it is a FCC requirement that carriers must verify a reseller is a current contributor through the use of the FCC on-line Form 499-A database. IAD reiterates its recommendation that a reseller’s current contributor status can be obtained from the FCC Form 499-A database as specified in the Form 499-A Instructions.

#### **Financial Operations Management Response**

Financial Operations would like to take exception with Vycera’s statement concerning the 499-A database:

“Indeed, it is well known that the on-line Form 499-A database is notoriously unreliable, such that wholesalers cannot depend on it to confirm USF contribution status.”

USAC works in conjunction with the FCC to maintain the 499-A database and it is the database of record for all FCC 499 filing information. USAC currently uses the FCC website at <http://gulfoss2.fcc.gov/cib/form499/499a.cfm> as a main source to identify contributors to universal support mechanisms.

#### **5. International Traffic and Revenue Report**

Pursuant to 47 C.F.R § 43.61 Reports of international telecommunications traffic, “Each common carrier engaged in providing telecommunications services between the area comprising the continental United States, Alaska, Hawaii and the off –shore U.S. points and any country or point outside that area shall file a report with the Commission no later than July 31 of each year for the service actually provided in the preceding calendar year.”

---

<sup>9</sup> Form 499-A, Instructions, at 18.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

According to the Instructions to the Telecommunications Worksheet, the “total revenues identified as international on line 419 (e) should match the total U.S. billed revenues that will be reported on July 31 of each year pursuant to 47 C.F.R § 43.61.”

IAD noted that on the 2003 Form 499-A, the carrier did not report all international revenues on its filing to the FCC. IAD noted that the carrier omitted revenue related to its resellers and only included the total revenue reported as end-user revenue in Block 4 of the Form 499-A. IAD noted that this finding has no monetary effect on the Form 499-A, but will note this as an exception because it is a FCC rule violation.

### **Recommendation**

USAC IAD recommends that Vycera Communications ensure that the amount of international revenue reported on Line 419 (e) of the FCC Form 499-A corresponds to the amount of international revenue reported on the International Traffic and Revenue Report submitted to the FCC on July 31 each year.

### **Carrier Response**

The IAD finding and recommendation appear to indicate that because the revenue reported on Vycera’s Form 499-As do not match the revenues included in the Company’s Section 43.61 international traffic and revenue reports, an FCC rule violation has occurred. The Company notes that this finding and recommendation have no impact on its potential USF contribution amount.

The Company reports its Section 43.61 data in accordance with Section 43.61 of the Commission’s rules and the associated Filing Manual for International Data. The Company reports its Form 499-A revenue in accordance with the FCC’s regulations and USF Orders. While Vycera acknowledges that the instructions on Form 499-A state that, in most cases, international traffic reported on the Form 499-A should equal the international revenue reported on the international traffic and revenue reports filed in accordance with Section 43.61 of the Commission’s rules,<sup>12</sup> there is no corresponding FCC rule or order that requires these revenues to match. Indeed, there are numerous circumstances in which this would simply not be possible while complying with other aspects of the Form 499-A instructions and/or with the Manual for the Reporting of International Traffic and Revenue, the instruction manual for filing of reports filed under Section 43.61.<sup>13</sup> The Form 499-A even acknowledges possible discrepancies,<sup>14</sup> which are inherently unavoidable, as the Section 43.61 report and the Form 499-A serve different purposes and are governed by different rules.

Section 43.61 report is concerned only with a carrier’s international revenue. More critically, the Section 43.61 report seeks details about the manner in which carriers carry traffic internationally (*i.e.*, facilities-based, facilities-resale and pure resale) and the settlement rate or settlement-like rate that a carrier may pay to terminate that traffic. The Commission uses this information to monitor rates

<sup>12</sup> 47 C.F.R. § 43.61; For an example of the instruction, *See, e.g.*, 2005 FCC Form 499-A, Instructions at 19.

<sup>13</sup> This manual is available online at [www.fcc.gov](http://www.fcc.gov). The current version was published in 1995.

<sup>14</sup> *See, e.g.*, 2005 Form 499-A, Instructions at 19.

paid by U.S. carriers to prevent violations such as whipsawing, and discrimination against U.S. carriers (particularly by incumbent Post Telephone and Telegraph (“PTTS”) administrations). Revenue data is often derived based on the routing and destination. For calls where the routing may not be known, Commission staff has provided guidance to carriers that it would be appropriate for a carrier to allocate calls based on the carrier’s known traffic pattern, and approximate the associated revenue.

By comparison, the Form 499-A is focused primarily on revenue. The Form 499-A instructions clearly call for carriers to match their reported revenues to their books of account.<sup>15</sup> The instructions even provide that a carrier is permitted to use allocations between jurisdictions based on past experience when actual traffic data is not available, which can be contrasted with Section 43.61 reports which include historical revenue derived from switch records.<sup>16</sup> In short, the Form 499-A and the Section 43.61 reports are rarely directly related. The reports have different purposes, different instructions and different requirements. While the underlying data used may be related, that is where the similarities end.

With respect specifically to Vycera, while it may be the case that any differences between the two reports could be attributable to issues noted in Worksheet 3, the fact that the revenue amounts do not match is not an FCC rule violation. Rather, the matching of the reports is mentioned as part of the Form 499-A Instructions, which, as described above, may be in conflict with the requirements of Section 43.61 and the applicable FCC orders on traffic reporting and universal service. To the extent that an instruction on the Form 499-A contradicts or is otherwise inconsistent with FCC regulations or orders by the Commission, that instruction is invalid unless it was subjected to the rigors of the Administrative Procedures Act.<sup>17</sup>

Again, the Company notes that this finding and recommendation have no impact on its potential USF contribution amount. However, to the extent the finding and recommendation implies that Vycera’s international revenue reported on the Form 499-A must match its international revenue reported in the Section 43.61 reports, and an FCC rule violation has occurred if they do not match, for the reasons specified above, Vycera respectfully disagrees that this is required or constitutes any FCC rule violation.”

### **Financial Operations Management Response**

USAC Financial Operations Management has reviewed this IAD finding with no additional comments.

---

<sup>15</sup> Form 499-A, Instructions, at 17.

<sup>16</sup> *Id.* at 20. Further, as the Form 499-A is due on April 1 and the Section 43.61 report is due on July 31 of each year, carriers often find that precise traffic data may not be available in time for the Form 499-A deadline.

<sup>17</sup> 5 U.S.C. § 551, *et seq.*

**Summary of Audit Findings**

The following provides a summary of the entire above mentioned audit findings and the monetary effects on the carrier's potential additional contribution.

**2003 Form 499-A (2002 Revenue Year)**

Form 499-A Line	Revenue Amount Reported	Interstate Amount Reported	International Amount Reported	Revenue Amount Audited	Interstate Amount Audited	International Amount Audited	Potential Effect on Contribution Base
403	\$ -	\$ -	\$ -	\$ 187,036	\$ 187,036	\$ -	\$ 187,036
404	\$ 5,267,044	\$ -	\$ -	\$ 5,282,800	\$ -	\$ -	\$ -
405	\$ -	\$ -	\$ -	\$ 106,670	\$ 106,670	\$ -	\$ 106,670
414	\$ 8,271,308	\$ 260,301	\$ 3,458,301	\$ 9,838,111	\$ 308,731	\$ 5,649,417	\$ 48,430
<b>Total Estimated Effect on Contribution Base</b>							<b>\$ 342,136</b>

NOTE: IAD noted that the carrier appears to qualify for LIRE in 2003 and therefore the potential effect on the carrier's contribution base is only assessed on interstate revenues.

**2004 Form 499-A (2003 Revenue Year)**

<b>2004 Form 499-A</b>							
Form 499-A Line	Revenue Amount Reported	Interstate Amount Reported	International Amount Reported	Revenue Amount Audited	Interstate Amount Audited	International Amount Audited	Potential Effect on Contribution Base
404(b)	\$ 6,686,249	\$ -	\$ -	\$ 6,705,779	\$ -	\$ -	\$ -
405	\$ -	\$ -	\$ -	\$ 58,287	\$ 58,287	\$ -	\$ 58,287
422	\$ (1,088,374)	\$ (46,739)	\$ (349,018)	\$ (1,088,374)	\$ (54,418)	\$ (349,018)	\$ (7,679)
<b>Total Estimated Effect on Contribution Base</b>							<b>\$ 50,608</b>

The following provides an estimate of the carrier's net additional contribution due to the Fund. This is only an estimate and may not reflect the actual amounts invoiced by USAC Financial Operations.

Form Year	Potential Effect on Contribution Base	Average Contribution %	Average Circularity Factor	Potential Additional USF Contribution
2003	\$342,136	7.28%	N/A	\$24,909
2004	\$50,608	9.27%	9.11%	\$4,264
<b>Estimated Additional USF Due</b>				<b>\$29,173</b>

This concludes the result of the audit. This report is intended solely for the use of USAC and the FCC and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes. This report is a matter of private record and its distribution is limited.

WS: W:\Audit\Public\Audit Reports in Progress\Contributor Revenue\CR2005CP004

cc: Mr. Scott Barash, Acting USAC Chief Executive Officer  
Mr. David Capozzi, Acting USAC General Counsel

# ATTACHMENT B



## Universal Service Administrative Company

Billing and Collections Department  
1-888-641-8722

---

January 31, 2006

Vycera Communications, Inc.  
12750 High Bluff Dr.  
San Diego, CA, 92130

**RE: Contributor Revenue Audit- Vycera Communications, Inc., Filer ID: 812626**

Dear Thalia Gietzen:

USAC's Internal Audit Division (IAD) has completed the audit of Vycera Communications, Inc. Filer ID:812626 filed FCC Form 499-A -- Telecommunications Reporting Worksheet for 2003/2004<sup>10</sup>. The audit final report detailing the findings was sent by IAD in a separate package. As a result of the audit findings, we have determined that Vycera Communications, Inc. revenues are inaccurately reported on the FCC Form 499-A(s) presently on file for the years 2003/2004. Accordingly, *Vycera Communications, Inc.* must revise its FCC 499-A revenue reports for these years.

**The required FCC Form 499-A revisions must be received by USAC no later than 60 days from the date of this letter.** Please attach a cover letter to the Form 499-A revisions that reference the audit performed by USAC IAD, and mail your forms to:

USAC  
Attn: FCC Form 499 Data Collection Agent  
2000 L Street, N.W. Suite 200  
Washington, DC 20036

USAC will review the submitted Form (s) under the regular Form 499 revision process. USAC will process Vycera Communications, Inc. revised Form(s) and apply the appropriate contribution adjustment during the first quarter following any accepted form revision.

All billed contributions must be paid by the invoice due date to avoid late payment fees and Red Light action.<sup>11</sup> Billed contributions over 90 days delinquent are subject to the Debt

---

<sup>10</sup> Pursuant to 47 C.F.R. §§ 54.707, 54.711(a).

<sup>11</sup> *Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection and Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, Report and Order*, MD Docket No. 02-339, FCC 04-72, at ¶ 4 (rel. April 13, 2004) (*Red Light Rule Order*).

Collection Improvement Act (DCIA),<sup>12</sup> and will be transferred to the FCC for further collection.

In accordance with 47 C.F.R. Sections 54.719(c) and 54.720(a), *Vycera Communications, Inc.* may appeal this action and the audit findings on which it is based. You may send your written appeal and supporting documentation to the Federal Communications Commission (FCC) at:

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC: "Docket Nos. 96-45 and 97-21." To ensure your appeal receives proper consideration by the FCC, we strongly recommend that, before you submit your appeal to the FCC, you carefully review the requirements set forth in 47 C.F.R. § 54.721.

Should you have any questions, please contact USAC at (888) 641-8722

Sincerely,  
USAC Billing and Collections  
Financial Analyst: Chang-Hua Chen

The logo for USAC (Universal Service Administrative Company) features the letters "USAC" in a bold, serif font. A stylized, curved line or swoosh arches over the letters, starting from the left and ending under the "C".

cc: HOA DUONG

---

<sup>12</sup> *Debt Collection Improvement Act of 1996*, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).



# ATTACHMENT C